
EXHIBIT A

2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 10-CR-19 (JG)
:
-against- : United States Courthouse
: Brooklyn, New York
:
ADIS MEDUNJANIN, : Monday, April 30, 2012
: 9:30 a.m.
DEFENDANT. :
----- X

TRANSCRIPT OF CRIMINAL CAUSE ON TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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2007

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22 Proceedings recorded by computerized stenography. Transcript
23 produced by Computer-aided Transcription.
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Mary Agnes Drury, RPR
Official Court Reporter

Jury Charge Instructions

2010

1 Okay. You've heard all the evidence in the case
2 and the arguments of counsel. It's my job now to instruct
3 you on the applicable law. You can't base your verdicts on
4 any other view of the law than the one that I give you in
5 these instructions. If there appears to you to be any
6 difference between the law as stated by counsel in their
7 closing arguments or at any other time, and the law that I
8 give to you now, of course it's my instructions that you
9 must follow.

10 Don't single out any one of these instructions as
11 alone stating the law. Rather, when you go back to the jury
12 room in a little while to begin your deliberations, I want
13 you to consider my instructions to you as a whole.

14 I'm going to give you instructions that --
15 generally, in three parts. The first relates to general
16 rules about your role and the way in which you are to review
17 the evidence in the case. The second part will address the
18 particular crimes charged in the case and the elements that
19 the government must prove beyond a reasonable doubt with
20 respect to each of the charged crimes. And lastly, I'll
21 give you some brief instructions about the conduct of your
22 deliberations.

23 In charging you on the applicable law, let me be
24 clear that I am expressing no view about how you should
25 decide the facts of the case. The facts of the case and the

Jury Charge Instructions

2011

1 determination of the facts is left exclusively to the jury.
2 Nothing I've said or done in the course of this trial should
3 be taken by you as expressing any opinion on my part about
4 any aspect of the facts of the case, the credibility of the
5 witnesses, or the weight to be given by you to any of the
6 evidence. You're the jury, you're the sole judges of the
7 facts in the case.

8 I'm the Judge of the law. You must find the facts
9 in accordance with the law as I am now giving it to you. In
10 determining the issues of fact presented in the case, it's
11 your duty as jurors to consider all the evidence before you
12 with complete impartiality and to render your verdicts
13 without bias, prejudice or sympathy as to either the
14 defendant or the government. These parties, like all
15 parties, who bring their disputes into this Court are equal
16 before the law and you can assume that the case is important
17 to both the government and the defendant.

18 The Defendant Adis Medunjanin is before you today
19 because he's been charged with violations of federal law.
20 As I've told you before, the defendant has pleaded not
21 guilty to the charges. That means the government must prove
22 him guilty beyond a reasonable doubt the government's burden
23 to prove a defendant guilty beyond raised never shifts to
24 the defendant.

25 A defendant in a criminal case need not call any

Jury Charge Instructions

2012

1 witnesses, question any of the Government's witnesses or
2 produce any evidence. The law presumes the defendant to be
3 innocent of all the charges and he must be presumed by you
4 to be innocent throughout your deliberations. Only if you
5 as a jury is unanimous convinced that the defendant guilty
6 beyond a reasonable doubt will the presumption cease to
7 operate. If the government fails to prove the defendant
8 guilty beyond a reasonable doubt, you must find him not
9 guilty. The presumption of innocence alone is sufficient to
10 require that result. Unless you, as jurors, are unanimously
11 convinced beyond a reasonable doubt of his guilt.

12 What is a reasonable doubt? It's a doubt that's
13 based upon reason and common sense. It's a doubt that a
14 reasonable person has after carefully weighing all the
15 evidence or lack of evidence. It's a doubt that would cause
16 a reasonable person to hesitate to act in a matter of
17 importance in his or her own personal life. Proof beyond a
18 reasonable doubt must therefore be proof of such a
19 convincing character that a reasonable person wouldn't
20 hesitate to rely and act upon it in the most important of
21 her own affairs. A reasonable doubt is not a caprice or a
22 whim. A reasonable doubt is not a speculation or suspicion.
23 Reasonable doubt is not an excuse to avoid the performance
24 of an unpleasant duty. It is not sympathy. The law doesn't
25 require that the government prove guilt beyond all possible

Jury Charge Instructions

2013

1 doubt, proof beyond a reasonable doubt is sufficient to
2 convict.

3 If after a fair and impartial consideration of all
4 the evidence or lack of evidence concerning a particular
5 charge you have a reasonable doubt, it is your duty to
6 acquit the defendant of that charge. On the other hand, if
7 after a fair and impartial consideration of all the evidence
8 you are satisfied of his guilt beyond a reasonable doubt,
9 you should vote to convict.

10 Your verdicts in the case must be based solely on
11 the evidence or lack of evidence. The evidence in this case
12 consists of the testimony of the witnesses, both on direct
13 and cross-examination, both from this witness stand and via
14 deposition in one instance. The evidence also consists of
15 the exhibits that have been received in evidenced and
16 stipulations by the parties that certain facts are to be
17 considered proven. Some of the evidence was obtained
18 through the use of search warrants and wire taps. This
19 evidence was lawfully obtained pursuant to court
20 authorization.

21 Generally speaking, the law recognizes two types
22 of evidence from which you can properly find the truth as to
23 the facts. One is direct evidence, such as the testimony of
24 an eyewitness to an event. The other is indirect or
25 circumstantial evidence. Circumstantial evidence is the

Jury Charge Instructions

2014

1 proof of a chain of circumstances that points to the
2 existence or nonexistence of some other fact or facts.

3 A simple example of circumstantial evidence that
4 we commonly use here in the courthouse is if you were to
5 suppose you came to court on a day like today; bright,
6 sunny, dry and then after several hours here in the
7 courtroom you were to see people coming through those rear
8 doors wearing wet raincoats and shaking wet umbrellas, and
9 then if you were to further suppose that Ilene closed the
10 blinds so you couldn't see outside, you wouldn't have any
11 direct evidence that the weather had changed and it had
12 begun to rain, however, you might infer that from the
13 circumstances you observed. That's all there is to
14 circumstantial evidence. Based on facts that you find to
15 have been proved, you draw such reasonable inferences or
16 conclusions that seem justified to you in light of your
17 experience and good judgment and common sense.

18 The law makes no distinction between direct and
19 circumstantial evidence. You may consider both. What the
20 law requires is that before a defendant is convicted of a
21 particular charge, that the jury be satisfied of the
22 defendant's guilt of that charge beyond a reasonable doubt
23 based on its assessment of all the evidence in the case.

24 You heard testimony that Mr. Medunjanin made
25 statements to members of law enforcement on September 14th

Jury Charge Instructions

2015

1 and 17th of 2009, and January 7th and 8th of 2010. There's
2 also been evidence that the defendant retained an attorney
3 before making some of these statements. The legality, I've
4 mentioned this to you during the trial, the legality of this
5 questioning is not at issue. The government may question
6 someone who has agreed to answer questions, even if the
7 person has retained an attorney. However, in deciding what
8 weight to give those statements, you must first examine with
9 great care whether the statements were in fact made, and if
10 they were, whether they were made voluntarily. I instruct
11 you that you are to give each statement such weight as you
12 feel that it deserves in light of all the evidence in the
13 case.

14 As jurors, you're the sole judges of the
15 credibility or the believability of the witnesses and of the
16 weight that the witness' testimony deserves. You should
17 carefully scrutinize all of the testimony given, the
18 circumstances under which each witness testified, and every
19 matter in evidence that tends to show whether or not a
20 witness is worthy of your belief. If you find that any
21 statement made by a witness from the witness stand was false
22 in whole or in part, you may disregard the particular part
23 you find to be false or you may disregard that witness'
24 entire testimony as unworthy of your belief.

25 Your decisions in this respect may depend on how

Jury Charge Instructions

2016

1 the witness you're considering impressed you. Was the
2 witness candid and forthright or on the other hand, did the
3 witness seem to be hiding something or seem to be evasive or
4 suspect in some way. How did the witness' testimony on
5 direct examination compare with the witness' testimony on
6 cross. Was the witness consistent in the testimony given or
7 were there contradictions. Did the witness appear to know
8 what he or she was talking about and strike you as someone
9 who is trying to report his or her knowledge accurately.
10 How much you choose to believe any witness may be influenced
11 by any interest the witness may have in the outcome of the
12 case, or by any bias you may perceive the witness to have.

13 You heard testimony from law enforcement
14 witnesses. The fact that a witness be employed as a law
15 enforcement officer doesn't make his or her testimony
16 deserving of more or less consideration or greater or lesser
17 weight than the testimony of a non-law enforcement witness.
18 Defense counsel may properly question the credibility of a
19 law enforcement witness. It's your decision after reviewing
20 all the evidence whether to credit the testimony of law
21 enforcement witnesses and what weight, if any, to give such
22 testimony.

23 You heard testimony from expert witnesses; Evan
24 Kohlmann, David McCollum, Kirk Yeager. Experts are
25 witnesses who by education or experience or training have

Jury Charge Instructions

2017

1 acquired learning or experience or knowledge in a science or
2 a specialized area of knowledge beyond the knowledge of the
3 average juror. You should give the expert testimony that
4 was -- and the opinions that they rendered in this case as
5 much or as little weight as you think they deserve in light
6 of all the evidence in the case.

7 You heard the testimony of government witnesses
8 Zarein Ahmedzay and Najibullah Zazi, who pleaded guilty to
9 crimes pursuant cooperation agreements with the government.
10 These agreements are in evidence. Now, the testimony of an
11 accomplice may be enough in itself for conviction, provided
12 the jury finds that the testimony establishes guilt beyond a
13 reasonable doubt. On the other hand, it's also the case
14 that accomplice testimony is of such a nature that it must
15 be scrutinized with great care and viewed with particular
16 caution when you decide how much, if any, of the testimony
17 to believe.

18 I've given you some general instructions regarding
19 credibility, regarding credibility generally, and I'm not
20 going to repeat them here, but let me say a few things you
21 may want to consider during your deliberations on the
22 subject of these accomplice witnesses.

23 You should ask yourselves whether these witnesses
24 would benefit more by lying or by telling the truth. Was
25 the particular witness' testimony made up in any way because

Jury Charge Instructions

2018

1 he believed or hoped that he would somehow receive favorable
2 treatment by testifying falsely. Or did he believe that his
3 interests would best be served by testifying truthfully.

4 If you believe that the witness was motivated by
5 hopes of personal gain, such as a reduced sentence on the
6 charge or charges that the witness pled guilty to was the
7 motivation, one that would cause the witness to lie or was
8 it one that would cause him to tell the truth. Did his
9 motivation color his testimony. In sum, you should look at
10 all the evidence and decide what credence, what credibility
11 and what weight, if any, to give to the testimony of these
12 accomplice witnesses.

13 You heard the testimony from Zakir Khan. The
14 Court granted this witness immunity in connection with his
15 testimony. You may consider this grant of immunity when you
16 assess the witness' credibility, but you may not speculate
17 as to why the witness was granted immunity. You should not
18 conclude that the witness had committed any crime just
19 because immunity had been conferred upon him.

20 The defendant didn't testify in this case. Under
21 our Constitution a defendant has no obligation to testify or
22 present any other evidence for that matter. As I told you
23 many times, it's the prosecution's burden to prove a
24 defendant guilty beyond a reasonable doubt. That burden
25 remains with the prosecution at all times and never shifts

Jury Charge Instructions

2019

1 to a defendant. A defendant is never required to prove
2 anything let alone that he's innocent and of course he's not
3 required to testify. You can't attach any significance to
4 the fact that the defendant chose not to testify. He was
5 exercising one of our most fundamental constitutional
6 rights. No adverse inference against him may be drawn by
7 you because he did not take the witness stand. You may not
8 consider this against him in any way during your
9 deliberations. In deed, I order you not to even discuss the
10 fact that he didn't testify during your deliberations.

11 There was testimony at trial that the attorneys
12 interviewed witnesses when preparing for and even during the
13 course of the trial. You must not draw any unfavorable
14 inference from that. To the contrary, attorneys are obliged
15 to prepare their cases as thoroughly and as possible. And
16 in the discharge of that responsibility, they can properly
17 interview witnesses before the trial and as necessary
18 throughout the course of the trial.

19 You heard testimony and statements by counsel
20 about other participants in the events giving rise to the
21 charges in the case who are not defendants in the case.
22 Don't speculate about the reasons for that. The only issue
23 in this case is whether the government has proven the
24 charges against this defendant beyond a reasonable doubt.

25 The question of the possible punishment of

Jury Charge Instructions

2020

1 defendant should he be found guilty is of no concern to the
2 jury and it should not in any sense enter into or influence
3 your deliberations. The duty of imposing sentence, should
4 that become necessary, rests exclusively with me, the Court.
5 Your function is to weigh the evidence in the case and to
6 determine whether or not the defendant has been proved
7 guilty beyond a reasonable doubt of the particular charge
8 you're considering solely on the basis of the evidence in
9 the case. Under your oath as jurors you cannot allow a
10 consideration of the possible punishment to influence your
11 verdicts in any way or in any other way enter into your
12 deliberations.

13 As I told you before the first stipulation was
14 read, when the parties agree on the existence of a fact by
15 stipulating to it, you are to accept the facts that are
16 stipulated to as proven beyond a reasonable doubt.

17 All right. Let me turn to the charges. But
18 before I address particular charges, I want to address some
19 principles that apply throughout them or to multiple
20 charges. One is what it means to act knowingly and
21 intentionally. All of the charges in the case implicate
22 concepts of knowledge and intent, so let me address those up
23 front.

24 A person activities knowingly if he acts
25 intentionally and voluntarily, not because of ignorance,

Jury Charge Instructions

2021

1 mistake, accident or carelessness. Whether a defendant
2 acted knowingly may be proven by his or her conduct and all
3 of the facts and circumstances in the case. A person acts
4 intentionally when he acts deliberately and purposefully.
5 That is, the defendant's acts must have been the product of
6 his subconscious objective rather than the product of
7 mistake or accident.

8 It is sufficient if the government proved that
9 defendant intentionally engaged in the conduct that the law
10 forbids. The government is not required to prove that the
11 defendant was actually aware of the law that forbids the
12 conduct.

13 With respect to several of the counts, and I'll be
14 more particular about it later on in the charge, but with
15 respect to several of the counts, the defendant is charged
16 with aiding and abetting others to commit a crime. With
17 respect to those charges, it's not necessary for the
18 government to show that the defendant himself physically
19 committed the crime with which he's charged in order for the
20 government to sustain its burden of proof. The reason for
21 that is under the law a person who aids or abets another in
22 committing an offense is just as guilty of the offense as if
23 he committed it himself.

24 So with respect to certain counts; Counts 3, 7, 8
25 and 9, you may find the defendant guilty of the offense

Jury Charge Instructions

2022

1 charged if you find beyond a reasonable doubt that the
2 government proved that another person actually committed the
3 crime that the defendant is charged with and that the
4 defendant aided and abetted that person in its commission.

5 As you can see with respect to aiding and abetting
6 liability, the government must first prove beyond a
7 reasonable doubt that another person actually committed the
8 crime charged. Obviously, a defendant can't be convicted of
9 aiding or abetting in criminal acts of another if the
10 government has failed to prove that the crime was committed
11 by the other person in the first place.

12 But if you do find that the crime in question was
13 committed, then you must consider whether the defendant
14 aided or abetted the commission of the crime. In order for
15 you to find that the defendant aided or abetted another in
16 committing a particular crime, the government must prove
17 beyond a reasonable doubt first, that the defendant
18 knowingly associated himself in some way with the crime and
19 second, that he participated in the crime by doing some act
20 to help make the crime succeed. To establish that the
21 defendant knowingly associated himself with the crime, the
22 government must prove that the defendant acted knowingly and
23 intentionally. To establish that the defendant participated
24 in the commission of the crime, the government must prove
25 that the defendant engaged in some affirmative conduct or

Jury Charge Instructions

2023

1 overt act for the specific purpose of bringing about the
2 crime.

3 (Continued on the next page.)

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CHARGE

1 THE COURT: It is important to understand that the mere
2 presence of a defendant where a crime is being committed,
3 even coupled with knowledge by the defendant that the crime
4 is underway, or mere association with others who are
5 committing a crime, is not sufficient to establish aiding and
6 abetting. A person who has no knowledge that a crime is
7 being committed or about to be committed would inadvertently
8 do something that aids in the commission of a crime, is not
9 an aider and abettor. An aider and abettor must know that
10 the crime is being committed and act in some way that is
11 intended to bring about the success of the criminal venture.
12 In determining with respect to a particular charge that you
13 are considering whether the defendant aided or abetted the
14 commission of a crime charged, ask yourselves these
15 questions: Did he participate in the crime charged is
16 something that he wanted to bring about? Did he knowingly
17 associate himself with the criminal venture? Did he seek by
18 his actions to make the criminal venture succeed? If he did
19 all of those things, then the defendant is an aider and
20 abettor and therefore guilty of the offense. On the other
21 hand, if your answer to any of those questions is "no," then
22 the defendant is not an aider and abettor and you must find
23 him not guilty
24 So I described for you the mental state of acting knowingly
25 and acting intentionally, and given you instructions

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CHARGE

1 regarding what it means to aid and abet an offense.

2 Let me turn now to the specific charges. I emphasize that
3 you must consider the evidence separately with respect to
4 each count. You will be asked to render a separate verdict
5 on each count, and I will provide you with a verdict sheet
6 that will assist you in doing so.

7 By way of overview, the defendant is charged with nine
8 crimes: conspiracy to use weapons of mass destruction, Count
9 One; conspiracy to commit murder in a foreign country, Count
10 Two; providing material support to a foreign terrorist
11 organization is Count Three; conspiring to provide material
12 support to a foreign terrorist organization is Count Four; -
13 and again I will give you a verdict sheet that has these
14 denominators, which charge is associated with which count -
15 receiving military-type training from a foreign terrorist
16 organization is Count Five; conspiracy to commit an act of
17 terrorism transcending national boundaries is Count Six;
18 attempt to commit an act of terrorism transcending boundaries
19 is Count Seven; then there are two charges of using a firearm
20 and/or destructive device during and in relation to a crime
21 of violence, those are Counts Eight and Nine.

22 As I mentioned, you will render separate verdicts on each
23 count

24 Now, as you consider each count, the only question for you to
25 answer will be whether the government has carried its burden

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CHARGE

1 of proving the elements, or ingredients, of that count beyond
2 a reasonable doubt. I want to emphasize at the outset of
3 these instructions to you about the elements of the charged
4 crimes, that there's never any permissible substitute for
5 guilt beyond a reasonable doubt of the elements of the charge
6 you are considering. This defendant is not on trial for
7 harboring extremist views, religious or political, and if you
8 find that he harbored such views, you cannot allow that to
9 act as a substitute for proof beyond a reasonable doubt of
10 the elements of any of the charges. Similarly, he's not on
11 trial for associating with or being friends with people who
12 have admitted to acts of terrorism. That his associates pled
13 guilty to some of the offenses with which this defendant is
14 charged says nothing about whether the defendant is himself
15 guilty of the crimes charged. Guilt is personal, and you
16 cannot consider the witnesses' pleas of guilty as evidence
17 against this defendant.

18 I will instruct you first on Count Two which charges
19 Conspiracy to Commit Murder in a Foreign Country
20 Specifically, it charges that between January 2008 -- and, by
21 the way, when I give you dates, they are just approximate.
22 The government doesn't need to prove dates with precision.
23 Approximate dates will due. Count Two charges that between
24 January of 2008 and September of 2008, the defendant,
25 together with others, knowingly and intentionally conspired

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CHARGE

1 to commit murder and maiming outside the United States.
2 You can't find the defendant guilty of this count unless the
3 government proves the following elements beyond a reasonable
4 doubt:

5 First, that during that time period, there was a conspiracy
6 to commit murder in a foreign country;

7
8 Second, the government must prove beyond a reasonable that
9 the defendant, Adis Medunjanin, at that time was a member of
10 that conspiracy, knowing what its goal was and intending by
11 his actions to help the conspiracy achieve that goal;

12 Third element is that the defendant knowingly joined
13 the conspiracy while he was in the United States; and

14 Fourth, the government must prove beyond a
15 reasonable doubt that at least one conspirator, not
16 necessarily the defendant, committed at least one overt act
17 in furtherance of the conspiracy.

18 Let me elaborate a little on these four elements of the Count
19 Two.

20 The first two, what it means to prove a conspiracy and what
21 it means to prove that the defendant became a member of the
22 charged conspiracy, those are the first two elements
23 respectively of this Count Two, these principles apply to
24 each of the conspiracy counts. So I will instruct you in
25 full on them now with respect to this first charge that I'm

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CHARGE

1 charging you about this Count Two, and later on when I
2 discuss with you the elements of other conspiracies with
3 which the defendant is charged, I'm just going to tell you to
4 remember these instructions and follow in connection with
5 those charges as well. Okay? I will not repeat them each
6 time a conspiracy charge is discussed with you.
7 So the first element of this Count Two is that the government
8 must prove beyond a reasonable doubt that two or more people
9 entered into the unlawful agreement charged in Count Two; it
10 is an agreement to commit murder in a foreign country. One
11 person can't commit the crime of conspiracy alone. Rather,
12 the proof must convince you that at least two people joined
13 together in a common criminal scheme. Now, the government
14 doesn't need to prove an express or formal agreement. It
15 need not prove that the alleged conspirators got together and
16 stated in words or in writing what the scheme was, its object
17 or purpose, or the means by which it was to be accomplished.
18 It is sufficient if the proof establishes that the
19 conspirator tacitly came to a mutual understanding to
20 accomplish an unlawful act by means of a joint plan or a
21 common design
22 Since a conspiracy is, by its very nature, characterized by
23 secrecy, direct proof may not be available. You may,
24 therefore, infer the existence of a conspiracy from the
25 circumstances of the case and from the conduct of the parties

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CHARGE

1 involved. In a very real sense, in the context of a
2 conspiracy charge, actions often speak louder than words.
3 You may, in determining whether an agreement existed here,
4 consider the actions and statements of all of those you find
5 to be participants as proof that a common design existed to
6 act together for the accomplishment of the unlawful purpose
7 stated in the indictment, in the charge you are considering.
8 Now, the second element that the government has to prove
9 beyond a reasonable doubt with respect to Count Two is that
10 the defendant became a member of the charged conspiracy with
11 knowledge of its criminal goal or goals and intending by his
12 actions to help it succeed. I have already explained to you
13 what it means to act knowingly and intentionally. However,
14 in the context of the conspiracy charges that you will
15 consider in this case, I want to stress that merely being
16 present at a place where criminal conduct is underway does
17 not make a person a member of a conspiracy to engage in that
18 criminal conduct. This is true even if the person knows that
19 a crime is being committed. Similarly, the fact that a
20 person, without knowledge that a crime is being committed,
21 merely happens to act in a way that furthers the purposes or
22 objectives of the conspiracy, does not make that person a
23 conspirator. More is required under law. What is required
24 is that a defendant must have participated with knowledge of
25 at least some of the purposes or objectives of the conspiracy

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CHARGE

1 and with the intention of aiding in the accomplishment of
2 those unlawful acts.

3 In sum, a defendant, with an understanding of the unlawful
4 character of the conspiracy, must be proved beyond a
5 reasonable doubt have intentionally engaged, advised or
6 assisted in it for the purpose of furthering the illegal
7 undertaking.

8 Now, the extent of a defendant's participation in
9 a conspiracy doesn't have any bearing on the issue of guilt.
10 Each member of the conspiracy may perform separate and
11 distinct acts and may even perform them at different times.
12 Some play major roles, while others play minor roles in the
13 scheme. A defendant need not have known the identity of each
14 and every member of the scheme. He need not have been fully
15 informed as to all of the details or the scope of the
16 conspiracy. He need not have been a member of the conspiracy
17 for the entire time of its existence. The key inquiry is
18 simply whether the defendant joined the conspiracy charged
19 with an awareness of at least some of the basic aims and
20 purposes of the unlawful agreement and with the intent to
21 help it succeed.

22 The third element the government has to prove beyond
23 a reasonable doubt with regard to Count Two is that the
24 defendant joined the conspiracy while he was within the
25 United States.

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CHARGE

1 Finally, the fourth element has to be proved beyond
2 a reasonable doubt with regard to charge two, Count Two, is
3 that the defendant or a coconspirator committed at least one
4 overt act in furtherance of the conspiracy. The indictment
5 charges the following overt acts as ones that were committed
6 within the United States and in furtherance of the object of
7 the conspiracy. They are:

8 First, in July or August of 2008, in Queens, New
9 York, the defendant Adis Medunjanin, together with Najibullah
10 Zazi and Zarein Ahmedzay, attempted to recruit Zakir Khan to
11 travel overseas with them to wage violent jihad.

12 The second charged overt act is on or about August
13 28, 2008, the defendant, Najibullah Zazi and Zarein Ahmedzay
14 traveled from Queens, New York to Newark Liberty
15 International Airport in Newark, New Jersey.

16 The third overt act alleges that on or about August
17 28, 2008, the defendant, Najibullah Zazi and Zarein Ahmedzay
18 boarded a flight at Newark Liberty International Airport to
19 fly from Newark, New Jersey to Doha, Qatar and Peshawar,
20 Pakistan.

21 An overt act, standing alone, may itself be
22 innocent, may be itself a lawful act, and it does not have to
23 itself constitute an objective of the conspiracy. But an
24 apparently innocent act can shed its harmless character if it
25 is a step in carrying out a conspiracy. You are therefore

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CHARGE

1 instructed that all the government is required to prove in
2 this regard is the overt act, not that the overt act was
3 itself criminal.

4 Those are the elements of Count Two.

5 Let me turn to Count Three, which charges the
6 defendant with Providing Material Support to a Foreign
7 Terrorist Organization.

8 Specifically, it alleges that between September of
9 2008 and January 2010, the defendant and others knowingly and
10 intentionally provided material support and resources to a
11 foreign terrorist organization, specifically al-Qaeda.

12 You may not find the defendant guilty of Count
13 Three, unless the government has proven beyond a reasonable
14 doubt the following elements:

15 First, that the defendant provided material support
16 or resources;

17 Second, that the defendant provided such support or
18 resources to a foreign terrorist organization, specifically
19 al-Qaeda;

20 The third element the government must prove beyond a
21 reasonable that the defendant acted knowingly and
22 intentionally; and

23 Fourth, the government must prove beyond a
24 reasonable doubt that the defendant is a national of the
25 United States.

2033

CHARGE

1 With respect to the first element, the government
2 has to prove beyond a reasonable doubt that the defendant
3 provided material support or resources. This law does not
4 prohibit being a member of a designated group. Nor does it
5 prohibit advocating the political goals of a designated
6 group. What is prohibited is an act of giving material
7 support. Material support or resources can take the form of
8 money or personnel, and personnel can include offering one's
9 personal services, that is, agreeing to work under the
10 direction and control of al-Qaeda.

11 The second element the government has to prove
12 beyond a reasonable doubt with respect to Count Three is that
13 the defendant provided these resources to al-Qaeda, and that
14 al-Qaeda had at the time been designated a foreign terrorist
15 organization by the United States Secretary of State. I
16 instruct you that al-Qaeda was designated a foreign terrorist
17 organization by the United States Secretary of State on
18 October 8, 1999.

19 The third element that must be proved beyond a
20 reasonable doubt is that in providing material support or
21 resources to al-Qaeda, the defendant did so knowingly and
22 intentionally. I explained to you the definitions of these
23 mental states, and you will follow those instructions here.
24 For this element to be satisfied, the government must prove
25 beyond a reasonable doubt that the defendant knew that

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CHARGE

1 al-Qaeda had been designated by the Secretary of State as a
2 foreign terrorist organization, or that he knew that al-Qaeda
3 engaged in terrorist activity, or that he knew that al-Qaeda
4 was engaged in terrorism.

5 Let me briefly define those phrases for you and the
6 terms.

7 "Terrorist activity" includes hijacking or sabotage
8 of an aircraft, vessel, vehicle, train or other conveyance;
9 seizing, detaining or threatening to kill, injure or further
10 detain another person to compel or coerce some third party,
11 including a government, to do something or not do something;
12 a violent attack upon an internationally protected person,
13 including employees and officials of governments or
14 international organizations; assassination; and the use of
15 any explosive, firearm, or other weapon or dangerous device,
16 other than for monetary gain and with the intent to endanger
17 the safety of one or more individuals or to cause substantial
18 damage to property. The term "terrorism" means premeditated,
19 politically motivated violence against noncombatant targets
20 by sub-national groups or clandestine agents.

21 As for the fourth element, the government has to
22 prove beyond a reasonable doubt that the defendant is a
23 national, meaning a citizen of the United States.

24 Now, one of the crimes which the defendant is
25 charged with is aiding and abetting others. So if you find

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CHARGE

1 that the government has proven beyond a reasonable doubt both
2 that someone else committed this crime and that the defendant
3 aided and abetted that some other person in doing so, you may
4 find the defendant guilty on that basis. And you will
5 consider the instructions I have already given you regarding
6 what constitutes aiding and abetting liability.

7 Count Four charges Conspiracy to Provide Material
8 Support to a Foreign Terrorist Organization by Adis
9 Medunjanin and others between 2008 and January 2010. In
10 plain English, Count Four alleges that the defendant
11 conspired with others to commit the crime charged in Count
12 Three on which I just instructed you.

13 You can't find the defendant guilty of Count Four,
14 unless you find that the government has proven beyond a
15 reasonable doubt the following three elements:

16 First, the government has to prove beyond a
17 reasonable doubt the charged conspiracy - in this instance an
18 agreement to provide material support or resources to
19 al-Qaeda.

20 Second, the government has to prove beyond a
21 reasonable doubt that the defendant knowingly and
22 intentionally became a member of that charged conspiracy,
23 knowing that its goal was to provide material support or
24 resources to al-Qaeda and intending by his actions to help it
25 achieve that goal.

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CHARGE

1 The third element with regard to this Count Four is
2 that the government has to prove beyond a reasonable doubt
3 that the defendant was a national of the United States.

4 Now, I told you this was coming. With regard to the
5 first two elements of this charge, I have already instructed
6 you on the attributes of a conspiracy, and what it means for
7 a defendant to become a member of the conspiracy. Those two
8 elements need to be proved with regard to the conspiracy
9 charged in this count beyond a reasonable doubt. You will
10 follow the instructions I have already given you with regard
11 to those elements. I remind you that the government must
12 prove the charged conspiracy and that the defendant became a
13 member of the charged conspiracy beyond a reasonable doubt.
14 As I mentioned to you earlier, mere association with others
15 who are committing the crime, even with knowledge that they
16 are committing it, is not sufficient to establish membership
17 in a conspiracy to commit that crime.

18 As for the last element of this charge, the third
19 element, the government must prove beyond a reasonable doubt
20 that the defendant is a national, meaning a citizen, of the
21 United States.

22 Count Five charges the defendant with receiving
23 military-type training from a foreign terrorist organization,
24 between September 2008 and October 2008, within the
25 extraterritorial jurisdiction of the United States. You

2037

CHARGE

1 can't find the defendant guilty of this charge, unless you
2 find that the government has proved the following elements
3 beyond a reasonable doubt:

4 First, that the defendant received military-type
5 training from a designated foreign terrorist organization,
6 specifically in this case al-Qaeda. Military-type training
7 includes training in means or methods that can cause death or
8 serious bodily injury or damaged property or training on the
9 use, production or assembly of an explosive firearm or other
10 weapon.

11 The second element of this Count Five, there must be
12 proof beyond a reasonable is that the defendant received this
13 military-type training knowingly and intentionally, that is,
14 he knew that al-Qaeda has been designated ago a foreign
15 terrorist organization or that al-Qaeda engaged in terrorist
16 activity or that al-Qaeda engaged in terrorism. I already
17 defined all of those terms for you

18 The third element of Count Five that must be proved
19 beyond a reasonable doubt is the defendant a national of the
20 United States, meaning a citizen of the United States.

21 Count One charges the defendant and others with
22 during the periods between September 2008 and September 2009,
23 conspiring to use one or more weapons of mass destruction,
24 specifically explosives against persons and property within
25 the United States. And with using e-mail and the Internet in

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CHARGE

1 furtherance of the offense, traveling in interstate and
2 foreign commerce in furtherance of the offense, and agreeing
3 to commit an offense that would have affected interstate or
4 foreign commerce.

5 You may not find the defendant guilty of this charge
6 unless you find the government has proved the following
7 elements beyond a reasonable doubt:

8 First, that the charged conspiracy in this setting
9 an agreement to use weapons of mass destruction against
10 persons and property within the United States in fact existed

11 I already told you what a con and is a and what the
12 government must prove to establish a conspiracy and you will
13 follow those instructions here as well. I should also tell
14 you that the term weapon of mass destruction has its ordinary
15 mean ago destructive device, including any explosive bomb or
16 similar device.

17 The second element the government must prove beyond
18 a reasonable doubt to this Count One charges conspiracy to
19 use weapons of mass destruction is that the defendant became
20 a member of that charged conspiracy with knowledge of its
21 criminal goal and intending by his actions to help it
22 succeed.

23 (Continued on the next page.)
24
25

Jury Charge Instructions

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1 THE COURT: I've already instructed you on this as
2 well and what it means to become a member of a conspiracy.
3 You'll follow those instructions in this setting as well.

4 The third element the government must prove beyond
5 a reasonable doubt is at least one of the following three
6 jurisdictional elements we call them. One, that the mail or
7 any facility of interstate or foreign commerce was used to
8 further the offense or second, that any of the conspirators
9 traveled in or caused another to travel in interstate or
10 foreign commerce to further the offense or third, that the
11 offense, if committed, would have affected interstate or
12 foreign commerce.

13 The term interstate commerce includes any movement
14 or transportation of people or goods or merchandise or money
15 from one state to another state; the District of Columbia or
16 any commonwealth territory or possession of the United
17 States. The term facility of interstate commerce includes
18 means of transportation and communication, such as
19 interstate telephone or interstate communications. Foreign
20 commerce includes commerce between the United States and any
21 foreign country.

22 Count six charges another conspiracy, the
23 conspiracy to commit an act of terrorism transcending
24 national boundaries between September of 2008 and January of
25 2010.

Jury Charge Instructions

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1 The defendant and others are charged with agreeing
2 or conspiring to kill, maim, commit an assault resulting in
3 serious bodily injury to, an assault with a dangerous weapon
4 to one or more persons within the United States, and that
5 e-mail and the internet were used in furtherance of the
6 offense, and that the offense, if committed would have
7 affected interstate and foreign commerce.

8 In order to find the defendant guilty of
9 count six, you must find the government has proved beyond a
10 reasonable doubt the following five elements. First, that
11 the charged conspiracy in this setting, a conspiracy to
12 kill, maim, commit an assault resulting in serious bodily
13 injury or assault with a dangerous weapon, one or more
14 persons within the United States existed. So the government
15 has to prove with respect to all conspiracy charges, must
16 prove in the first -- as the first element, that the charge
17 conspiracy in fact existed.

18 The second element the government must prove
19 beyond a reasonable doubt with regard to all these
20 conspiracy charges is that the defendant knowingly and
21 intentionally became a member of the charged conspiracy,
22 knowing its goals, and intending by his actions to help
23 achieve that goal. I've already instructed you with regard
24 to these elements, you'll follow those instructions in this
25 setting as well.

Jury Charge Instructions

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1 Third, with regard to this charge in count six,
2 the government must prove beyond a reasonable doubt that the
3 offense involved conduct both inside and outside the United
4 States. Fourth, the government has to prove beyond a
5 reasonable doubt that e-mail or the internet was used in
6 furtherance of the offense or that the offense if committed
7 would have affected interstate or foreign commerce. I've
8 already defined those terms for you and you'll follow those
9 instructions in this setting as well.

10 Fifth, the government must prove beyond a
11 reasonable doubt that at least one conspirator, not
12 necessarily the defendant, committed at least one overt act
13 in the United States in furtherance of the charge of
14 conspiracy. The indictment charges the following overt acts.

15 Can I see counsel at sidebar?

16 (Continued on the next page.)
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Sidebar

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1 (Sidebar bench conference begins.)

2 THE COURT: Why don't we say at least one overt
3 act in the United States and then other overt acts are not
4 in the United States.

5 MR. BITKOWER: The statute requires conduct in
6 both the United States and outside the United States, it
7 doesn't specifically say where the overt acts need to take
8 place. I think you already said, your Honor, that it
9 requires conduct both inside and outside the United States,
10 so I think that element is expressed, and the other elements
11 is overt act. I don't think that's necessary here in the
12 United States, these four words, unless counsel disagrees.

13 MS. CARVLIN: No, we don't disagree that you have
14 to commit conduct both in the United States and outside the
15 United States, I'm wondering if it's clear to the jury
16 without the overt acts you're not suggesting not stating
17 overt act.

18 MR. BITKOWER: I'm suggesting take out the four
19 words in used on page 23.

20 MS. CARVLIN: That's correct.

21 THE COURT: All right.

22 MR. BITKOWER: Thank you, your Honor.

23 (End of sidebar bench conference.)

24 (Continued on the next page.)

25

Jury Charge Instructions

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1 THE COURT: Sorry. You thought the sidebars were
2 over, right? You thought wrong.

3 Let me restate this fifth element of count six.
4 Conspiracy to commit an act of terrorism transcending
5 national boundaries. The fifth element that must be proved
6 beyond a reasonable doubt is that at least one conspirator,
7 not necessarily the defendant, committed at least one overt
8 act in furtherance of the conspiracy.

9 The indictment charges the following overt acts.
10 First, in or about September 2008 a person known as Ahmad
11 and Zahid transported the defendant, Najibullah Zazi and
12 Zarein Ahmedzay to Waziristan so they could receive military
13 training from al-Qaeda.

14 Second, in or about and between September and
15 December of 2008 Adnan el Shukrijumah, together with others,
16 including a person known as Abdul Hafeez, Abdul Hafidh and
17 Saleh al-Somati recruited and directed the defendant, Zazi
18 and Ahmedzay to conduct a terrorist attack in the US.

19 Third, on or about December 25th, the defendant
20 Adis Medunjanin boarded a flight and Peshawar, Pakistan and
21 ultimate destination of Newark Liberty International Airport
22 in Newark, New Jersey.

23 Fourth, in or about November of 2008 a person
24 known as Ahmad and Zahid transported Zazi to Waziristan so
25 that he could receive explosive training from al-Qaeda.

Jury Charge Instructions

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1 Fifth, on or about January 15, 2009, Zazi boarded
2 a flight in Peshawar, Pakistan with a ultimate destination
3 of Newark, New Jersey.

4 Sixth, on or about January 22nd, 2009 Ahmedzay
5 boarded a flight in Pakistan with an ultimate destination of
6 Newark, New Jersey.

7 Seven, on or about January 7th, 2010, the
8 defendant, while located Queens, telephoned 911 from a
9 cellar telephone and stated to the operator, we love death.

10 And eight, on or about January 7th, 2010 the
11 defendant intentionally crashed his car on the Whitestone
12 Expressway in Queens with the intent of killing himself and
13 one or more others.

14 Count seven charges an attempt to commit an act of
15 terrorism transcending national boundaries. So count seven
16 charges an attempt to commit the same crime that count six
17 charges the defendant with conspiring to commit, all right.

18 Specifically, it charges that between September of
19 2008 and January of 2010 the defendant attempted to kill,
20 maim, commit an assault resulting in serious bodily injury
21 and assault with a dangerous weapon, one or more persons
22 within the United States, and that the e-mail and internet
23 were used in furtherance of the offence. And the offense,
24 if committed, would have affected interstate and foreign
25 commerce. You can't find the defendant guilty of this

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Jury Charge Instructions

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1 charge, this count seven, unless you find the government has
2 proved the following elements beyond a reasonable doubt.

3 First, that the defendant attempted to kill, maim,
4 commit an assault resulting in serious bodily injury to or
5 assault with a dangerous weapon one or more persons within
6 the United States.

7 Second, the government -- that the government must
8 prove beyond a reasonable doubt that the offense involved
9 conduct both inside and outside the United States.

10 Third, the government must prove beyond a
11 reasonable doubt that e-mail or the internet was used to
12 further the offense or that the offense, if committed, would
13 have affected interstate or foreign commerce.

14 With respect to the first element, I instruct you
15 that in order to prove an attempt, the government must prove
16 beyond a reasonable doubt that the defendant intended to
17 commit the underlying crime. And second, he thereafter took
18 a substantial step towards its commission. A substantial
19 step is one that strongly corroborates a defendant's intent
20 to commit a crime. A mere intention to commit a crime
21 doesn't amount to an attempt to commit one, nor is it a
22 variable agreement without more sufficient to establish
23 intent.

24 Rather, what the law calls a substantial step must
25 be taken, and a substantial step is something more than mere

Jury Charge Instructions

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1 preparation; yet, it may be less than the last act necessary
2 before the actual commission of the crime. It's essential
3 that the government prove beyond a reasonable doubt that the
4 defendant, with the intent of committing the particular
5 criminal act, do some outward objective action, which in the
6 ordinary course of things will result in the commission of
7 the crime charged.

8 With respect to the second and third elements,
9 which are the -- the second element is that the offense
10 involved conduct both inside and outside the United States.
11 And the third element is that the government must prove
12 beyond a reasonable doubt that e-mail or internet was used
13 in furtherance of the offense or that the offense would have
14 committed -- excuse me, the offense, if committed, would
15 have affected interstate or foreign commerce. I already
16 instructed you on that, you'll follow those instructions
17 here as well.

18 This is one of the offenses with which the
19 defendant is charged with aiding and abetting. So if you
20 find that the government has proven beyond a reasonable
21 doubt that someone else attempted to commit an act of
22 terrorism transcending national boundaries and applying the
23 instructions I've already given you that the defendant aided
24 and abetted that offense, you may find him guilty provided
25 you conclude the government has established those things

Jury Charge Instructions

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1 beyond a reasonable doubt.

2 Count eight and nine charge use of a firearm
3 and/or destructive device. Count eight charges that between
4 September of 2008 and January 2010 the Defendant Adis
5 Medunjanin knowingly and intentionally used and carried one
6 or more firearms during and in relation to one or more
7 crimes of violence; specifically, counts two and count five.
8 You'll see on the verdict sheet with respect to counts eight
9 and nine, that you're only to consider them. Both of these
10 counts allege the use of a firearm or destructive device or
11 both during and in relation to a crime of violence.

12 So you'll see on the verdict sheet an instruction
13 that you're only to consider the count if the underlying
14 crime of violence or crimes of violence are ones that the
15 government has proven beyond a reasonable doubt. So you'll
16 only consider count eight, for example, if you find the
17 government has -- you found the defendant guilty of count
18 two or count five, okay, or both, and you'll see these
19 instructions on the verdict sheet.

20 Count eight charges that the government used and
21 carried one or more firearms during and in relation to count
22 two, which is conspiracy to commit murder in a foreign
23 country. And count five, which is receipt of military type
24 training from a foreign terrorist organization and that he
25 knowingly and intentionally possessed such firearm or

Jury Charge Instructions

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1 firearms in furtherance of those crimes. And the government
2 further alleges that the defendant discharged one or more
3 such firearms and that one or more of the firearms
4 discharged was a destructive device.

5 You can't find the defendant guilty of count eight
6 unless you find that government has proved beyond a
7 reasonable doubt the following elements.

8 First, the government must prove beyond a
9 reasonable doubt that during and in relation to the
10 commission of the crime charged in count two and/or the
11 crime charged in count five, the defendant used or carried a
12 firearm or possessed a firearm in furtherance of one of the
13 crimes.

14 Second, the government must prove beyond a
15 reasonable doubt that the defendant acted knowingly and
16 intentionally. I've already instructed you on what it means
17 to act knowingly and intentionally, you'll apply those
18 instructions here as well.

19 If you find that the government has proven both of
20 those elements beyond a reasonable doubt, you should find
21 the defendant guilty of count eight. Of course, if you
22 conclude with respect to any count that the government has
23 failed to prove the elements beyond a reasonable doubt, you
24 must find the defendant not guilty.

25 If you do find guilt on count eight, you must

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1 further determine whether the government -- and you'll see
2 this on the verdict sheet as well -- you must further
3 determine whether the government has proven beyond a
4 reasonable doubt that one or more of the firearms involved
5 in the offense was discharged.

6 And then a second question on the verdict sheet is
7 -- asks you whether the government has proved beyond a
8 reasonable doubt that one or more of the firearms involved
9 in the offense was a destructive device. A destructive
10 device is defined as any explosive bomb or grenade or
11 similar device.

12 Here as well the defendant is charged with aiding
13 and abetting liability. That is, with aiding and abetting
14 others in the commission of the offense. So if you find the
15 government has proven beyond a reasonable doubt that someone
16 else committed this offense and that the defendant aided and
17 abetted that person, you may find the defendant guilty on
18 that basis.

19 Count nine charges that between November 2008 and
20 September 2009 the defendant knowingly and intentionally
21 used and carried one or more firearms during and in relation
22 to one or more crimes of violence; specifically, count one,
23 count three, count four, count six, and count seven.

24 I've already instructed you on the elements what
25 it means to use and carry a firearm or destructive device

Jury Charge Instructions

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1 during and in relation to the crime of violence, it's the
2 same elements with regard to count eight. The only
3 difference between this count and count eight is that this
4 count relates to different underlying crimes. Because
5 count nine charges the use of possession of a destructive
6 device in connection with the five prior counts that I
7 mentioned, you'll consider count nine only if you found the
8 defendant guilty of one or more of those five counts.
9 Again, you'll see this on the verdict sheet as well.

10 You can't find the defendant guilty unless you
11 find that the government has proven beyond a reasonable
12 doubt that the defendant during and in relation to at least
13 one of those enumerated crimes of violence used or carried a
14 destructive device or possessed a destructive device in
15 furtherance of one of the crimes.

16 Here again, the government's charge is aiding and
17 abetting liability. So if you find that the government has
18 proved that someone else committed the offense and also
19 proved beyond a reasonable doubt that the defendant aided
20 and abetted that other person in the commission of the
21 offense, you may find the defendant guilty.

22 Also, and only with respect to this count nine,
23 you may consider another form of -- another theory of
24 liability. Specifically, even if you conclude that the
25 defendant did not himself personally commit the crime or did

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1 not aid and abet the offense is another method by which you
2 may -- another method you may consider in determining
3 whether the government has proved him guilty beyond a
4 reasonable doubt.

5 Specifically, if you find beyond a reasonable
6 doubt that the defendant was a member of one or more of the
7 charged conspiracies in count one or four or six, then you
8 may also, but you're not required to, find him guilty of
9 count nine provided that you find beyond a reasonable doubt
10 each of the follow elements.

11 First, that someone else specifically Zazi or
12 Ahmedzay committed the crime charged in count nine.

13 Second, that the person or persons who actually
14 committed the crime charged in count nine were members of
15 the conspiracy or the conspiracies that you found to have
16 existed.

17 Third, that the crime charged in count nine was
18 committed pursuant to a common plan and understanding you
19 found to exist among the conspirators.

20 Fourth, that the defendant was a member of the
21 conspiracy or conspiracies at the time the issue count nine
22 was committed, the crime charged in count nine was
23 committed.

24 And fifth, that the defendant could have
25 reasonably foreseen that the crime charged in count nine

Jury Charge Instructions

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1 might be committed by his coconspirators. This is known as
2 Pinkerton Liability.

3 If you find that all five of these elements are
4 proved beyond a reasonable doubt, you can find the defendant
5 guilty of count nine, even if he did not personally
6 participate or aid and abet in the acts constituting the
7 crime, and even if he did not have actual knowledge of it.

8 You'll be happy to hear that I'm done charging you
9 on the elements of the offenses. And I want to turn briefly
10 to what you'll commence in a few minutes, which is your
11 deliberations.

12 You need a foreperson. Typically, the default
13 rule is juror number one acts as foreperson, but that's not
14 binding on you, you're free to chose another juror to act as
15 foreperson, but you need a foreperson in order for your
16 deliberations to proceed in an orderly way. Obviously, your
17 foreperson's vote is entitled to no greater weight than the
18 vote of any other juror.

19 I remind you that your function is to reach a fair
20 conclusion based on the evidence in the case within the
21 framework of the law as I've given it to you. It's
22 obviously a very important function. Your verdicts in the
23 case must be unanimous. After the verdicts are announced,
24 I'm going ask each of you individually whether the verdicts
25 announced are your verdicts. From now on when you return to

Jury Charge Instructions

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1 the jury room, I'm not going to say don't discuss the case.
2 Now, it's your job to discuss the case. It's your duty, as
3 jurors to consult with one another, to listen to your fellow
4 jurors, to deliberate with a view towards reaching agreement
5 on your verdicts, provided you can do so without violating
6 your individual judgment and conscience.

7 In the course of your deliberations no one should
8 surrender a conscientious belief as to what the truth is and
9 what the weight and the effect of the evidence is, and each
10 of you has to decide the case for yourselves, not simply
11 acquiesce in the conclusions of your fellow jurors. On the
12 other hand, I do ask you to examine the issues in the case
13 and the evidence before you with candor, with an open mind,
14 with frankness, with the appropriate degree of deference to
15 the views of each other. Listen to each other. Discuss the
16 evidence in the case. Don't hesitate to change your
17 opinions during deliberations if you are convinced they are
18 wrong. Remember that the parties and the Court are relying
19 upon you to give a full and conscientious deliberation and
20 consideration to the issues in evidence before you. Only by
21 doing so will you carry out to the fullest your oath as
22 jurors, which is to well and truly try the issues in the
23 case and to render true verdicts.

24 If you need to communicate with me during your
25 deliberations, send me a note signed by your foreperson or

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1 by one or more members of the jury. Nobody should attempt
2 to communicate with me or any member of my staff except in
3 such a signed writing. And I won't communicate with you on
4 any subject touching on the merits of case other than in
5 writing after consulting with counsel or orally here in open
6 court again, after consulting with counsel.

7 If you want to have any of the testimony re-read,
8 just say so in a note. If that happens, be as specific as
9 you can in those notes. Tell us which witness or witness'
10 testimony you want to hear; and if you only want to hear
11 part of it, tell us which part. Most important in this
12 regard be patient while we find what you ask for in the
13 record. It always takes longer to find the testimony a jury
14 wants read back than a jury thinks it should, so be patient,
15 don't think we've ignored your request for a read back of
16 testimony if we haven't either called you back in to hear
17 the testimony or sent a transcript of the testimony into the
18 jury room.

19 If you need me to repeat any of these legal
20 instructions, just say so. If you need clarification of any
21 of them, just say so in a note. I'll consult with counsel
22 and do the very best I can to provide you with the
23 clarification you seek.

24 If you want to see any of the exhibits that were
25 received in evidence, just say so in a note and we'll send

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Jury Charge Instructions

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1 them into the jury room for your inspection. If you want to
2 hear any of the recorded conversations, just say so, we'll
3 bring you back in here and play the for you.

4 When you've reached your verdicts send me a note
5 signed by your foreperson that says simply, "The jury has
6 reached its verdicts." Don't tell us what the verdicts are
7 and during the course of -- in that note, and during the
8 course of your deliberations, be careful not to indicate to
9 us in any way how you stand in your deliberations. That's
10 your business. Don't share it with us. Don't give us a
11 numerical count as to where you are at any point or in any
12 way indicate to us how you stand in your deliberations.

13 Let me see counsel at sidebar and see if there is
14 anything else I need to tell you.

15 (Continued on the next page.)

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